

**FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

MARK A. KOCH,  
*Plaintiff-Appellee,*  
v.  
CHARLES L. RYAN,\*  
*Defendant-Appellant.*

No. 01-16891  
D.C. No.  
CV-90-01872-JBM

MARK A. KOCH,  
*Plaintiff-Appellee,*  
v.  
CHARLES L. RYAN; GEORGE  
HERMAN; DENNY HARKINS,  
*Defendants-Appellants,*  
and  
SAMUEL A. LEWIS, Director,  
Department of Corrections,  
*Defendant.*

No. 02-15061  
D.C. No.  
CV-90-01872-JBM  
ORDER

Appeal from the United States District Court  
for the District of Arizona  
James B. Moran, Senior Judge, Presiding

Argued and Submitted  
November 5, 2002—San Francisco, California

Filed July 11, 2003

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\*Charles L. Ryan, is substituted for his predecessor, as Acting Director  
of the Arizona Department of Corrections. Fed. R. App. P. 43(c)(2).

Before: Betty B. Fletcher, Johnnie B. Rawlinson, and  
Richard R. Clifton, Circuit Judges.

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### **COUNSEL**

Michael T. O'Toole, Assistant Attorney General, Phoenix,  
Arizona, for the appellants.

Timothy J. Eckstein, Osborn Maledon, Phoenix, Arizona  
(argued); Daniel J. Pochoda, Phoenix, Arizona (briefed), for  
the appellee.

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### **ORDER**

Petitioner's release from prison by the State of Arizona has rendered the consolidated appeals in this matter moot. *See Dilley v. Gunn*, 64 F.3d 1365, 1368 (9th Cir. 1995). Accordingly, the Motion to Dismiss Appeal filed by Appellant Charles L. Ryan is GRANTED.

This appeal is DISMISSED and the cases of *Koch v. Lewis*, 216 F. Supp. 2d 994 (D. Ariz. 2001) and *Koch v. Lewis*, 2001 WL 1944737 (D. Ariz. December 17, 2001) are REMANDED to the district court to determine whether its rulings should be vacated. *See Dilley*, 64 F.3d at 1372-73.

A certified copy of this order sent to the district court shall constitute the mandate.

**DISMISSED and REMANDED.**



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